

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
BYRSON CITY DIVISION  
2:13 cr 19**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Vs.</b>	)	<b>ORDER</b>
	)	
<b>JAMES THOMAS LIFSEY,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**THIS MATTER** is before the Court on Defendant's motion for appointment of counsel made in open Court. The Court has considered the Financial Affidavit of Defendant which reflects that Defendant has a retirement account which contains the sum of \$87,000. Defendant further has income from the account in the amount of \$1,720 each month and receives further income in the amount of \$720 from a Dollar General retirement account. To obtain the retirement account of \$87,000, the account would have to be withdrawn by Defendant and federal taxation would reduce the amount in the account. The Defendant is separated from his spouse and his spouse may have claims for equitable distribution from the account. Considering such assets, the Court finds that Defendant, at the present time would be unable to retain counsel. Where a person has income or assets that are insufficient to provide for privately retained counsel, Volume VII of the *Guide to Judiciary Policies and Procedures*, §

210.40.40 provides in relevant part as follows:

**Partial Eligibility:**

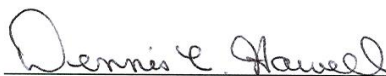
If a person's net financial resources and income anticipated prior to trial are in excess of the amount needed to provide him and his dependents with the necessities of life...but are insufficient to pay fully for retained counsel, the judicial officer should find the person eligible for the appointment of counsel under the CJA and should direct the person to pay the available excess funds to the Clerk of Court at the time of such appointment or from time to time thereafter.

Finding excess income and assets, the Court will grant the request the request for appointment of counsel, but will enter this written Order so that the District Court can determine whether or not Defendant has assets which could be sued for the payment for court appointed counsel upon the disposition of this matter.

**ORDER**

**IT IS, THEREFORE, ORDERED** that Defendant's Motion for Appointment of Counsel (oral motion) is hereby **GRANTED**. However, the Court finds that Defendant may have excess assets and income that could be used for the payment of his counsel fees should the District Court determine, in its discretion, to order the payment of such fees.

Signed: August 15, 2013



Dennis L. Howell  
United States Magistrate Judge

